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22 UNITED STATES OF AMERICA

23
24 UNITED STATES DISTRICT COURT
25 FOR THE CENTRAL DISTRICT OF CALIFORNIA

26 UNITED STATES OF AMERICA, No. CR 18-173-GW-34
27 Plaintiff, PLEA AGREEMENT FOR YOBANEY PINEDA
28 v.
29 JOSE LANDA-RODRIGUEZ, et al.,
30 [#34-YOBANEY PINEDA],
31 Defendants.

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33 1. This constitutes the plea agreement between YOBANEY PINEDA
34 ("defendant") and the United States Attorney's Office for the Central
35 District of California (the "USAO") in the above-captioned case. This
36 agreement is limited to the USAO and cannot bind any other federal,
37 state, local, or foreign prosecuting, enforcement, administrative, or
38 regulatory authority.

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DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:

a. At the earliest opportunity requested by the USAO and provided by the Court, appear and plead guilty to Count One of the Indictment in United States v. Jose Landa-Rodriguez, et al., CR No. 18-173-GW, which charges defendant with conspiring to engage in racketeering activity, in violation of 18 U.S.C. § 1962(d).

b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered
12 for service of sentence, obey all conditions of any bond, and obey
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be
15 excluded for sentencing purposes under United States Sentencing
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
17 within the scope of this agreement.

18 f. Be truthful at all times with the Probation Pretrial
19 Services Office and the Court.

20 g. Pay the applicable special assessment at or before the
21 time of sentencing unless defendant lacks the ability to pay and
22 prior to sentencing submits a completed financial statement on a form
23 to be provided by the USAO.

24 h. Agree to, and not oppose, the imposition of the
25 following condition of probation or supervised release: Defendant
26 shall submit to the search, with or without probable cause or
27 reasonable suspicion, of defendant's person, vehicle, residence,
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1 digital devices, including cell phones, and any other real or
2 personal property under defendant's control.

3 THE USAO'S OBLIGATIONS

4 3. The USAO agrees to:

5 a. Not contest facts agreed to in this agreement.

6 b. Abide by all agreements regarding sentencing contained
7 in this agreement.

8 c. At the time of sentencing, provided that defendant
9 demonstrates an acceptance of responsibility for the offense up to
10 and including the time of sentencing, recommend a two-level reduction
11 in the applicable Sentencing Guidelines offense level, pursuant to
12 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
13 additional one-level reduction if available under that section.

14 d. At the time of sentencing, move to dismiss the
15 remaining counts as against defendant. Defendant agrees, however,
16 that at the time of sentencing the Court may consider any dismissed
17 charges in determining the applicable Sentencing Guidelines range,
18 the propriety and extent of any departure from that range, and the
19 sentence to be imposed after consideration of the Sentencing
20 Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

21 NATURE OF THE OFFENSE

22 4. Defendant understands that for defendant to be guilty of
23 the crime charged in Count One of the Indictment, that is, racketeer
24 influenced and corrupt organizations ("RICO") conspiracy, in
25 violation of 18 U.S.C. § 1962(d), the following must be true: (1) an
26 agreement existed between two or more persons employed by or
27 associated with an enterprise that would have affected interstate or
28 foreign commerce, to conduct or participate, either directly or

1 indirectly, in the conduct of affairs of the enterprise through a
2 pattern of racketeering activity; (2) defendant joined or became a
3 member of the agreement with knowledge of its purpose; and
4 (3) defendant agreed that someone, not necessarily defendant, would
5 commit at least two acts of racketeering activity in furtherance of
6 the conspiracy.

7 5. An "enterprise" includes any individual, partnership,
8 corporation, association, or other legal entity, and any union or
9 group of individuals associated in fact although not a legal entity.
10 "Racketeering activity" includes: any act or threat involving murder,
11 kidnapping, robbery, or extortion, which is chargeable under state
12 law and punishable by imprisonment for more than one year; any
13 offense involving dealing in a controlled substance in violation of
14 21 U.S.C. §§ 841 or 846; witness tampering in violation of 18 U.S.C.
15 § 1312; retaliating against a witness in violation of 18 U.S.C.
16 § 1513; money laundering in violation of 18 U.S.C. §§ 1956 or 1957;
17 identity fraud in violation of 18 U.S.C. § 1028; and access device
18 fraud in violation of 18 U.S.C. § 1029.

19 6. A "pattern of racketeering activity" is at least two acts
20 of racketeering activity, the last of which occurred within ten years
21 after the commission of a prior act of racketeering. To establish a
22 pattern, the acts of racketeering activity must have a "nexus" to the
23 enterprise and be related, i.e., criminal acts that have the same or
24 similar purposes, results, participants, victims, or methods of
25 commission, or otherwise are interrelated by distinguishing
26 characteristics and are not isolated. The acts of racketeering
27 activity themselves must either extend over a substantial period of
28 time or they must pose a threat of continued criminal activity.

1 Defendant admits that defendant agreed that defendant or a co-
2 conspirator would commit two acts of racketeering activity and is, in
3 fact, guilty of this offense as described in Count One of the
4 Indictment.

5 PENALTIES

6 7. Defendant understands that the statutory maximum sentence
7 that the Court can impose for a violation of 18 U.S.C. § 1962(d) is:
8 twenty years' imprisonment; a five-year period of supervised release;
9 a fine of \$250,000 or twice the gross gain or gross loss resulting
10 from the offense, whichever is greatest; and a mandatory special
11 assessment of \$100.

12 8. Defendant understands that supervised release is a period
13 of time following imprisonment during which defendant will be subject
14 to various restrictions and requirements. Defendant understands that
15 if defendant violates one or more of the conditions of any supervised
16 release imposed, defendant may be returned to prison for all or part
17 of the term of supervised release authorized by statute for the
18 offense that resulted in the term of supervised release, which could
19 result in defendant serving a total term of imprisonment greater than
20 the statutory maximum stated above.

21 9. Defendant understands that, by pleading guilty, defendant
22 may be giving up valuable government benefits and valuable civic
23 rights, such as the right to vote, the right to possess a firearm,
24 the right to hold office, and the right to serve on a jury.
25 Defendant understands that once the Court accepts defendant's guilty
26 plea, it will be a federal felony for defendant to possess a firearm
27 or ammunition. Defendant understands that the conviction in this
28 case may also subject defendant to various other collateral

1 consequences, including but not limited to revocation of probation,
2 parole, or supervised release in another case and suspension or
3 revocation of a professional license. Defendant understands that
4 unanticipated collateral consequences will not serve as grounds to
5 withdraw defendant's guilty plea.

6 10. Defendant understands that, if defendant is not a United
7 States citizen, the felony conviction in this case may subject
8 defendant to: removal, also known as deportation, which may, under
9 some circumstances, be mandatory; denial of citizenship; and denial
10 of admission to the United States in the future. The Court cannot,
11 and defendant's attorney also may not be able to, advise defendant
12 fully regarding the immigration consequences of the felony conviction
13 in this case. Defendant understands that unexpected immigration
14 consequences will not serve as grounds to withdraw defendant's guilty
15 plea.

16 FACTUAL BASIS

17 11. Defendant admits that defendant is, in fact, guilty of the
18 offense to which defendant is agreeing to plead guilty. Defendant
19 and the USAO agree to the statement of facts provided below and agree
20 that this statement of facts is sufficient to support a plea of
21 guilty to the charge described in this agreement and to establish the
22 Sentencing Guidelines factors set forth in paragraph 13 below but is
23 not meant to be a complete recitation of all facts relevant to the
24 underlying criminal conduct or all facts known to either party that
25 relate to that conduct.

26 a. Throughout the period described in the Indictment, the
27 Mexican Mafia LACJ Enterprise (or, the "Enterprise") was a criminal
28 enterprise composed of a group of individuals associated for a common

1 purpose of engaging in a course of conduct, which course included the
2 trafficking of methamphetamine, heroin, and other controlled
3 substances, kidnapping, robbery, extortion, money laundering, witness
4 tampering and retaliation, identity and access device fraud, and
5 murder. In that regard, the Mexican Mafia LACJ Enterprise controlled
6 the majority of drug distribution among Hispanic inmates inside of
7 the Los Angeles County Jail ("LACJ"), and maintained control and
8 authority over Hispanic inmates in the LACJ through threats,
9 intimidation, and acts of violence against those inmates.

10 b. The Mexican Mafia LACJ Enterprise committed, attempted
11 to commit, and threatened to commit acts of violence, including
12 assaults and murders, to protect and expand the enterprise's criminal
13 operation, and promoted a climate of fear among rival gang members,
14 potential witnesses to the enterprise's criminal conduct, Hispanic
15 gang members and inmates, and those who may cooperate with law
16 enforcement authorities both within and outside of LACJ.

17 c. The Mexican Mafia LACJ Enterprise smuggled controlled
18 substances into LACJ for distribution, and used the threat of
19 violence to extort others engaged in the smuggling and distribution
20 of controlled substances within LACJ, as a means to generate income.
21 The Mexican Mafia LACJ Enterprise engaged in extortion of inmates by
22 other means, including by the operation of a "kitty" within LACJ and
23 by issuing fines for violations of Mexican Mafia rules, as other
24 sources of generating income. Further, the Mexican Mafia LACJ
25 Enterprise used the threat of violence to profit from drug
26 trafficking outside of LACJ by members of street gangs controlled by
27 or affiliated with the Mexican Mafia, by requiring the payment by
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1 these gangs of a portion of their drug proceeds, which amounted to
2 extortion of drug dealers.

3 d. As a result of its drug trafficking conduct,
4 throughout the period described in the above-captioned Indictment,
5 and as known to defendant, the Mexican Mafia LACJ Enterprise members
6 and associates engaged in, and their activities in some way affected,
7 commerce between one state and another state.

8 e. Prior to August 2015, and continuing after November
9 2015, an agreement existed between two or more persons to
10 participate, either directly or indirectly, in the affairs of the
11 Mexican Mafia LACJ Enterprise through a pattern of racketeering
12 activity. Beginning no later than August 22, 2015 and continuing at
13 least until November 22, 2015, defendant YOBANEY PINEDA joined and
14 became a member of that agreement, knowing of its purpose, knowing it
15 was illegal, and intending to help accomplish it. In that capacity,
16 defendant agreed that a conspirator, whether defendant or someone
17 else, would commit at least two acts of racketeering activity, in the
18 form of extortion and money laundering, which acts had a relationship
19 to one another and the enterprise, and posed a threat of continued
20 criminal activity.

21 f. During the time period of August 2015 through November
22 2015, defendant was incarcerated within the North County Correctional
23 Facility ("NCCF") of the LACJ and had been appointed to be a shot-
24 caller for NCCF. In that role, defendant was responsible for
25 carrying out the orders and procedures of the Enterprise within NCCF
26 and communicating with secretaries who were out of custody.

27 g. In furtherance of the racketeering conspiracy,
28 defendant committed at least the following acts:

i. On or about August 22, 2015, defendant received an order from an out-of-custody secretary to have victim R.B. assaulted because R.B. was interfering with Enterprise activities, including drug trafficking and extortion.

ii. On or about August 22, 2015, defendant reported to an out-of-custody secretary that victim M.G. was interfering with Enterprise activities, including drug trafficking and extortion.

iii. On or about August 22, 2015, defendant received an order from an out-of-custody secretary that M.G. was to be assaulted for interfering with Enterprise activities.

iv. On or about August 22, 2015, defendant ordered that R.B. and M.G. be assaulted for interfering with Enterprise activities, and on or about August 23, 2015, R.B. and M.G. were assaulted in dorm 828 of NCCF.

v. On or about November 22, 2015, in a recorded conversation with co-conspirators acting as out-of-custody facilitators, defendant was instructed about who was in control of NCCF, who defendant should be reporting to with regard to Enterprise activities, who would act as shot-caller for certain modules within NCCF, and that a certain a co-conspirator had lost his status in the Enterprise.

SENTENCING FACTORS

12. Defendant understands that in determining defendant's sentence the Court is required to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Sentencing Guidelines are advisory only, that defendant cannot have

1 any expectation of receiving a sentence within the calculated
 2 Sentencing Guidelines range, and that after considering the
 3 Sentencing Guidelines and the other § 3553(a) factors, the Court will
 4 be free to exercise its discretion to impose any sentence it finds
 5 appropriate up to the maximum set by statute for the crime of
 6 conviction.

7 13. Defendant and the USAO agree to the following applicable
 8 Sentencing Guidelines factors:

9 **Count One**

GROUP 1 (Extortion)		
Base Offense Level	18	[USSG § 2B3.2(a)]
Threat of Bodily Injury	+2	[USSG § 2B3.2(b)(1)]
Bodily Injury	+2	[USSG § 2B3.2(B)(4)]
GROUP 2 (Money Laundering)		
Base Offense Level	22	[USSG § 2S1.1(a)(1)]

14 14. Defendant and the USAO agree that, taking into account the
 15 factors listed in 18 U.S.C. § 3553(a)(1)-(7), the relevant Sentencing
 16 Guidelines effective on November 1, 2018, represent a reasonable
 17 basis for the Court to determine defendant's sentence in this case,
 18 and that defendant should be sentenced in accordance with the
 19 Sentencing Guidelines. Therefore, subject to paragraph 25 below,
 20 defendant and the USAO agree not to argue, either orally or in
 21 writing, that the Court (a) not follow the Sentencing Guidelines in
 22 imposing sentence; (b) impose a sentence not in accordance with the
 23 Sentencing Guidelines; or (c) impose a term of imprisonment outside
 24 the sentencing range corresponding to the determined offense level.

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15. Defendant understands that there is no agreement as to defendant's criminal history or criminal history category.

WAIVER OF CONSTITUTIONAL RIGHTS

16. Defendant understands that by pleading guilty, defendant gives up the following rights:

- a. The right to persist in a plea of not guilty.
- b. The right to a speedy and public trial by jury.
- c. The right to be represented by counsel - and if
have the Court appoint counsel -- at trial. Defendant
does, however, that, defendant retains the right to be
represented by counsel - and if necessary have the Court appoint
counsel at every other stage of the proceeding.

d. The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e. The right to confront and cross-examine witnesses against defendant.

f. The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

g. The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

h. Any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

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WAIVER OF APPEAL OF CONVICTION

17. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty plea was involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's conviction on the offense to which defendant is pleading guilty.

LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

8 18. Defendant agrees that, provided the Court imposes a total
9 term of imprisonment on all counts of conviction of no more than the
10 high-end of the applicable guideline range corresponding with a total
11 offense level of 19 or lower and the criminal history category as
12 found by the Court, defendant gives up the right to appeal all of the
13 following: (a) the procedures and calculations used to determine and
14 impose any portion of the sentence; (b) the term of imprisonment
15 imposed by the Court; (c) the fine imposed by the Court, provided it
16 is within the statutory maximum; (e) the term of probation or
17 supervised release imposed by the Court, provided it is within the
18 statutory maximum; and (f) any of the following conditions of
19 probation or supervised release imposed by the Court: the conditions
20 set forth in General Order 18-10 of this Court; the drug testing
21 conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); the
22 alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7);
23 and the search condition agreed to in Paragraph 2.

RESULT OF WITHDRAWAL OF GUILTY PLEA

25 19. Defendant agrees that if, after entering guilty plea
26 pursuant to this agreement, defendant seeks to withdraw and succeeds
27 in withdrawing defendant's guilty plea on any basis other than a
28 claim and finding that entry into this plea agreement was

1 involuntary, then (a) the USAO will be relieved of all of its
2 obligations under this agreement; and (b) should the USAO choose to
3 pursue any charge or any allegation of a prior conviction for a
4 felony drug offense that was either dismissed or not filed as a
5 result of this agreement, then (i) any applicable statute of
6 limitations will be tolled between the date of defendant's signing of
7 this agreement and the filing commencing any such action; and
8 (ii) defendant waives and gives up all defenses based on the statute
9 of limitations, any claim of pre-indictment delay, or any speedy
10 trial claim with respect to any such action, except to the extent
11 that such defenses existed as of the date of defendant's signing this
12 agreement.

13 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

14 20. Defendant agrees that if the count of conviction is
15 vacated, reversed, or set aside, both the USAO and defendant will be
16 released from all their obligations under this agreement.

17 EFFECTIVE DATE OF AGREEMENT

18 21. This agreement is effective upon signature and execution of
19 all required certifications by defendant, defendant's counsel, and an
20 Assistant United States Attorney.

21 BREACH OF AGREEMENT

22 22. Defendant agrees that if defendant, at any time after the
23 signature of this agreement and execution of all required
24 certifications by defendant, defendant's counsel, and an Assistant
25 United States Attorney, knowingly violates or fails to perform any of
26 defendant's obligations under this agreement ("a breach"), the USAO
27 may declare the agreement breached. All of defendant's obligations
28 are material, a single breach of the agreement is sufficient for the

1 USAO to declare a breach, and defendant shall not be deemed to have
2 cured a breach without the express agreement of the USAO in writing.
3 If the USAO declares the agreement breached, and the Court finds such
4 a breach to have occurred, then: (a) if defendant has previously
5 entered a guilty plea pursuant to this agreement, defendant will not
6 be able to withdraw the guilty plea, and (b) the USAO will be
7 relieved of all its obligations under the agreement.

8 23. Following the Court's finding of a knowing breach of the
9 agreement by defendant, should the USAO choose to pursue any charge
10 or any allegation of a prior conviction for a felony drug offense
11 that was either dismissed or not filed as a result of the agreements,
12 then:

13 a. Defendant agrees that any applicable statute of
14 limitations is tolled between the date of defendant's signing of this
15 agreement and the filing commencing any such action.

16 b. Defendant waives and gives up all defenses based on
17 the statute of limitations, any claim of pre-indictment delay, or any
18 speedy trial claim with respect to any such action, except to the
19 extent that such defenses existed as of the date of defendant's
20 signing this agreement.

21 c. Defendant agrees that: (i) any statements made by
22 defendant, under oath, at the guilty plea hearing; (ii) the agreed to
23 factual basis statement in this agreement; and (iii) any evidence
24 derived from such statements, shall be admissible against defendant
25 in any such action against defendant, and defendant waives and gives
26 up any claim under the United States Constitution, any statute, Rule
27 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules
28 of Criminal Procedure, or any other federal rule, that the statements

1 or any evidence derived from the statements should be suppressed or
2 are inadmissible.

3 COURT AND PROBATION AND PRETRIAL SERVICES OFFICE NOT PARTIES

4 24. Defendant understands that the Court and the Probation and
5 Pretrial Services Office are not parties to this agreement and need
6 not accept any of the USAO's sentencing recommendations or the
7 parties' agreements to facts or sentencing factors.

8 25. Defendant understands that both defendant and the USAO are
9 free to: (a) supplement the facts by supplying relevant information
10 to the Probation and Pretrial Services Office and the Court,
11 (b) correct any and all factual misstatements relating to the Court's
12 Sentencing Guidelines calculations and determination of an
13 appropriate sentence under the § 3553(a) factors, and (c) argue on
14 appeal and collateral review that the Court's Sentencing Guidelines
15 calculations and the sentence it chooses to impose are not error,
16 although each party agrees to maintain its view that the calculations
17 in paragraph 13 are consistent with the facts of this case. This
18 paragraph permits both the USAO and defendant to submit full and
19 complete factual information to the Probation and Pretrial Services
20 Office and the Court, even if that factual information may be viewed
21 as inconsistent with the factual basis and sentencing factors agreed
22 to in this agreement.

23 26. Defendant understands that even if the Court ignores any
24 sentencing recommendation, finds facts or reaches conclusions
25 different from those agreed to, and/or imposes any sentence up to the
26 maximum established by statute, defendant cannot, for that reason,
27 withdraw defendant's guilty pleas, and defendant will remain bound to
28 fulfill all defendant's obligations under this agreement. Defendant

1 understands that no one -- not the prosecutor, defendant's attorney,
2 or the Court -- can make a binding prediction or promise regarding
3 the sentence defendant will receive, except that it will be within
4 the statutory maximum.

5 NO ADDITIONAL AGREEMENTS

6 27. Defendant understands that, except as set forth herein and
7 in any contemporaneous agreement or addendum signed by all parties,
8 there are no promises, understandings, or agreements between the USAO
9 and defendant or defendant's attorney, and that no additional
10 promise, understanding, or agreement may be entered into unless in a
11 writing signed by all parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

28. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

NICOLA T. HANNA
United States Attorney

Max Shi

9/16/19

Date _____

SHAWN J. NELSON/MAX B. SHINER
Assistant United States Attorney

YOBANEY PINEDA
Defendant

Date _____

YOBANEY PINEDA
Defendant

JOHN CARLTON
Attorney for Defendant
YOBANEY PINEDA

Dated

9/16/19

CERTIFICATION OF DEFENDANT

2 I have read this agreement in its entirety. I have had enough
3 time to review and consider this agreement, and I have carefully and
4 thoroughly discussed every part of it with my attorney. I understand
5 the terms of this agreement, and I voluntarily agree to those terms.
6 I have discussed the evidence with my attorney, and my attorney has
7 advised me of my rights, of possible pretrial motions that might be
8 filed, of possible defenses that might be asserted either prior to or
9 at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a),
10 of relevant Sentencing Guidelines provisions, and of the consequences
11 of entering into this agreement. No promises, inducements, or
12 representations of any kind have been made to me other than those
13 contained in this agreement or in an agreement signed by all parties
14 or on the record in court. No one has threatened or forced me in any
15 way to enter into this agreement. I am satisfied with the
16 representation of my attorney in this matter, and I am pleading
17 guilty because I am guilty of the charges and wish to take advantage
18 of the promises set forth in this agreement, and not for any other
19 reason.

YOBANEY PINEDA
Defendant

YOBANEY PINEDA
Defendant

9/16/19
Date

Date _____

CERTIFICATION OF DEFENDANT'S ATTORNEY

2 I am YOBANEY PINEDA's attorney. I have carefully and thoroughly
3 discussed every part of this agreement with my client. Further, I
4 have fully advised my client of his rights, of possible pretrial
5 motions that might be filed, of possible defenses that might be
6 asserted either prior to or at trial, of the sentencing factors set
7 forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
8 provisions, and of the consequences of entering into this agreement.
9 To my knowledge: no promises, inducements, or representations of any
10 kind have been made to my client other than those contained in this
11 agreement or in an agreement signed by all parties or on the record
12 in court; no one has threatened or forced my client in any way to
13 enter into this agreement; my client's decision to enter into this
14 agreement is informed and voluntary; and the factual basis set forth
15 in this agreement is sufficient to support my client's entry of
16 guilty pleas pursuant to this agreement.

John Carlton
JOHN CARLTON
Attorney for Defendant
YOBANEY PINEDA

9/16/19
Date